

BEFORE THE
STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Outdoor Advertising)	
Sign Owned or Controlled by Menomonee Outdoor)	
Advertising in the County of Columbia,)	Case No. 95-H-907
Town of Caledonia, Highway 78.)	

FINAL DECISION

By letter dated March 6, 1995, Stephen Nelson, on behalf of Menomonee Outdoor Advertising, requested a hearing to review the denial of two applications for outdoor advertising sign permits. Pursuant to due notice, a hearing was held in Madison, Wisconsin on September 21, 1995. Mark J. Kaiser, Administrative Law Judge, presided. After the hearing the parties filed written arguments. The petitioner filed his initial brief on September 21, 1995; the respondent, the Department of Transportation, filed a response brief on October 12, 1995 and the petitioner filed a reply brief on October 18, 1995.

In accordance with §§227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Menomonee Outdoor Advertising, petitioner, by

Attorney Thomas S. Hornig
Brennan, Steil, Basting & MacDougall
P.O. Box 1148
Janesville, Wi 53547-1148

Wisconsin Department of Transportation, respondent, by

Attorney Barbara F. Bird
Office of General Counsel
P.O. Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a Proposed Decision on January 8, 1996. No comments on the Proposed Decision were filed. The Proposed Decision is adopted as the Final Decision in this matter.

Applicable Law

Section 84.30(4)(c)2., Stats., provides:

On interstate highways and freeways on the federal-aid primary system no 2 structures shall be spaced less than 500 feet apart. Outside of incorporated villages and cities, no structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area. Said 500 feet shall be measured along the interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

Findings of Fact

The Administrator finds:

1. Menomonee Outdoor Advertising (MOA) is an outdoor advertising company with its headquarters located at 2208 Longfellow Road, Fargo, North Dakota. Stephen H. Nelson is the president of MOA. MOA is licensed to do business in Wisconsin.
2. By application dated December 12, 1994, MOA applied to the Department of Transportation (Department) for outdoor advertising sign permits to erect two "V"-shaped billboards along the east side of State Trunk (STH 78) in Columbia County. The legal description of the site of the proposed signs is the NE ¼ of the NE ¼ of section 25, township 12 north, range 8 east, Town of Caledonia, Columbia County. STH 78 is a federal-aid primary highway.
3. The proposed site of the signs is south of the interchange with Cascade Mountain Road. The exit ramp for Cascade Mountain Road begins at a point labelled Station 55"B"+50 on the engineering diagrams (Exhibits 1 and 2). One sign would be placed approximately 500 feet south of Station 55"B"+50 and the second sign would be placed approximately 500 feet south of the first sign. Both signs would be erected approximately fifty feet from the highway right-of-way line. The land on which the proposed signs would be located is zoned highway interchange. The site is not within the limits of an incorporated village or city.
4. The site of the proposed signs is also north of the interchange with Interstate Highways 90 and 94 (Interstate 90/94). South of the interchange with Interstate 90/94, STH 78 is a two lane roadway, running roughly north and south with one lane carrying traffic in each direction. North of the interchange, STH 78 is a multi-lane, divided, limited access freeway.

The connecting ramp from the westbound lanes of Interstate 90/94 consists of two traffic lanes. Immediately west of the ramp from westbound I 90/94, a ramp from the eastbound lanes of Interstate 90/94 merges with the northbound lane of STH 78. A single northbound lane merges with the two lanes exiting from westbound Interstate 90/94 to form a stretch of three lane roadway. The point where the lanes merge to form a three lane roadway occurs at the point labeled Station 40"B"+06.46. No beginning or ending of pavement widening occurs with respect to the two traffic lanes exiting from westbound Interstate 90/94 at Station 40"B"+06.46.

The three lanes continue northward for approximately 450 feet to the point labelled Station 44"B"+56.00 on engineering drawings of the interchange. From Station 44"B"+56.00 north the left lane of the roadway, the lane carrying northbound traffic on STH 78, gradually narrows and ultimately terminates at a point labeled Station 55"B"+00.00 on the engineering diagrams.

5. By letter dated January 17, 1995, the Department denied the applications. The stated reason for the denial was that the proposed sign sites "are too close to the ramp. They have to be 500 feet away from the end of the ramp." The denial was reaffirmed in a second letter dated February 20, 1995. In this letter the Department indicated "that the I-90-94/STH 78 on-ramp terminates at station 55"B"+00."

Discussion

Section 84.30(4)(c)2, Stats., provides that no sign may be located within 500 feet of an interchange on an interstate or federal-aid primary highway. The only issue to be decided in this case is where the interchange of STH 78 and the westbound lanes of Interstate 90/94 ends. The petitioner argues that Station 40"B"+06.46 is the end of the interchange. The Department argues that Station 55"B"+00.00 is the end of the interchange.

The interchange at issue is unique in Wisconsin. Ostensibly, it is an interchange between Interstate 90/94 and STH 78. However, the only similarity between STH 78 south of the interchange and north of the interchange is that they are both numbered 78. South of the interchange, STH 78 is a two-lane roadway. North of the interchange it is a multi-lane, divided, limited access freeway. Further northward, this freeway merges with Highway 51 to form an interstate-quality northbound freeway serving central Wisconsin.

The subject interchange is as much an interchange between the two-lane STH 78 and the freeway-quality STH 78 as it is an interchange between Interstate 90/94 and STH 78. Station 46"B"+6.46 would arguably constitute the end of the entrance ramp from the westbound lanes of I 90/94; however, the interchange is designed in such a way that these lanes become the main-travelled way and the northbound lane of STH 78 becomes an

auxiliary lane. The interchange ends at the point the auxiliary lane terminates and traffic from northbound STH 78 must merge with that on the main-travelled way. That point is Station 55"B" +00.00.

This conclusion is reinforced by the labeling of the various lanes on the engineering diagrams. The continuation of the northbound lane of STH 78 is labelled as an auxiliary lane on the engineering diagrams (Stone September 7, 1995 deposition, page 29). The two lanes exiting Interstate 90/94 become the main-traveled way of this stretch of roadway. The northbound lane of STH 78 ultimately terminates, not either of the lanes exiting from Interstate 90/94. Traffic from STH 78 must move to the right to merge with that exiting from the westbound lanes of Interstate 90/94.

Conclusions of Law

The Administrator concludes:

1. The end of the interchange of the westbound lanes of I 90/94 and the northbound lane of STH 78 for purposes of §84.30(4)(c)2., Stats., is the termination of the auxiliary lane. This point is labelled Station 55"B" +00.00 on the engineering diagrams (Exhibits 1 and 2).
2. Pursuant to §§84.30(18) and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

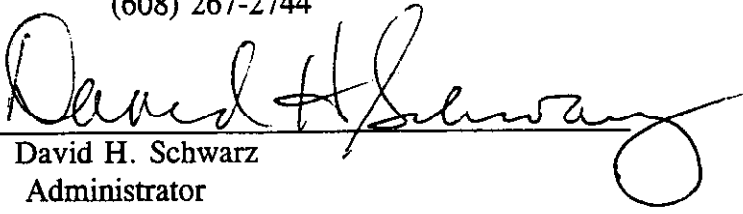
The Administrator orders:

The Department of Transportation's denial of the applications for outdoor advertising permits is affirmed.

Dated at Madison, Wisconsin on January 29, 1996.

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By


David H. Schwarz
Administrator